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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,338

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Akisato Kimura

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5281

27572

7590

02/24/2009

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EXAMINER

ARMSTRONG, ANGELA A

ART UNIT

PAPER NUMBER

2626

MAIL DATE

DELIVERY MODE

02/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/727,338

Applicant(s)

KIMURA ET AL.

Examiner

ANGELA A. ARMSTRONG

Art Unit

2626

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/26/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 20-23, 29-32, 34, 37, 39-43, 45, 49-51, 61 and 65-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 20-23, 29-32, 34, 37, 39-43, 45, 49-51, 61 and 65-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 26, 2009, has been entered.

This Office Action is in response to the amendment filed January 26, 2009, amending claims 1, 12, 20, 29, 32, 39, 40, 45, and 61, and cancelling claims 24-28, 33, 35-36, 38, 44, 46-48, 60, and 62-64. Currently, claims 1-15, 20-23, 29-32, 34, 37, 39-43, 45, 49-51, 61, and 65-67 are pending.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-15, 20-23, 29-32, 34, 37, 39-43, 45, 49-51, 61, and 65-67 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-11, 29-32, 34, 37, and 39-43 are rejected under 35 U.S.C. 101 because they merely manipulate an abstract idea (mathematical algorithm) without a claimed limitation to a practical application. The claimed invention, a series of steps to be performed on a computer, simply manipulates an abstract idea without a claimed limitation to the practical application,

where practical application may be shown by a) physical transformation or b) a useful, concrete and tangible result.

Claims 12-15, 45, and 49-51 are directed to non-statutory subject matter because the claims fail to be limited to only statutory embodiments. The claims only recite limitations for elements that, as disclosed in the specification, can be embodied as only software or a computer program. A computer program does not fall within one of the statutory classes of invention under 35 U.S.C. 101, and thus the claims are non-statutory and rejected under 35 U.S.C. 101.

Claims 20-23, 61, and 65-67 are directed to non-statutory subject matter because the claims fail to be limited to only statutory embodiments. Claims 20-23, 61, and 65-67 recite limitations for a recording medium capable of being read by a computer. The specification (at least at pages 108-109) discloses the recording medium can be transmission media to include waves or signals. A waveform or signal does not fall within one of the statutory classes of invention under 35 U.S.C. 101, and thus the claims are non-statutory and rejected under 35 U.S.C. 101.

Response to Arguments

3. Applicant's arguments with respect to claims 1-15, 20-23, 29-32, 34, 37, 39-43, 45, 49-51, 61, and 65-67 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANGELA A. ARMSTRONG whose telephone number is (571)272-7598. The examiner can normally be reached on Monday-Thursday 11:30-8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick N. Edouard can be reached on 571-272-7603. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Angela A Armstrong/
Primary Examiner, Art Unit 2626